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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. [redacted] 189

GEORGE R. WILLIAMS, et al., ex rel WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, JOHN THYLSTRUP,
Relators-Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION, et al.,
Respondents

Petition for Writ of Certiorari

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In the Supreme Court of the United States

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GEORGE R. WILLIAMS, et al., ex rel WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, JOHN THYLSTRUP,
Relators-Petitioners,
vs.
PACIFIC MARITIME ASSOCIATION, et al.,
Respondents

Petition for Writ of Certiorari

To the Justices of the Honorable Supreme Court of the United States:

The petition of William Thomas Carroll, Chris E. E. Makaila, John Thylstrup, respectfully represents:

There is no Opinion reported officially or unofficially with respect to that Order filed March 1, 1966, of the Honorable United States Court of Appeals for the Ninth Circuit which is the subject of this Petition, and said Order is hereinafter set forth in this Petition.

Jurisdiction of this Court is invoked on the grounds:

That by its Order of Dismissal of the Appeal of petitioners from Order of the United States District Court of October 8, 1965, which Dismisses With Prejudice the Fourth Amended Complaint of other parties in a class action, and petitioners and other members of the same class filed respective Appeals, to which petitioners are equally parties in interest, and wherein petitioners contend said Order is invalid, in that jurisdiction of the subject cause as to primary subject matter was transferred through Appeal by petitioners from prior Order which Dismisses With Prejudice the Third Amended Complaint filed to the behalf of all parties, when said pleading was the sole authorized Complaint before the Court, and said Court had Denied Severance of proceedings, and both of the said Orders of Dismissal With Prejudice are upon the same grounds, said Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision, and therein for the protection of the rights of Due Process in the subject class action of petitioners and of other members of the same class.

The Order sought to be reviewed is dated and entered as follows: In proceeding Number 20719 in the United States Court of Appeals for the Ninth Circuit, March 1, 1966.

The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by Writ of Certiorari is Section 1254(1), Title 28, U.S.C.A.

The question presented for review is: Whether the dismissal by a Court of Appeals of the Appeal of certain

parties of a class action, based upon the Motion therefor of other members of the same class in a separate Appeal proceeding, where the first appealing parties contend they are parties in interest to the subject Order by a United States District Court which dismisses the complaint of the other members, on the same grounds as said Court has previously Ordered dismissed a complaint in the same action, filed to the behalf of all of the parties plaintiff in said class action, and where Appeal was filed therefrom prior to leave granted by said District Court "*nunc pro tunc*" to said other plaintiffs to file the latter complaint, said Court, prior to said first Appeal, having denied severance of proceedings on the ground that all plaintiffs are in identity of interest, is a denial by said Court of Appeals of Due Process of Law, and an abuse of its power by said Court of Appeals so as to warrant the supervisory interposition of the Supreme Court of the United States over further proceedings in the subject cause in said Court of Appeals?

The Constitutional provision which the case involves is as follows:

The Fifth Amendment, Constitution of the United States annotated.

STATEMENT OF THE CASE

In June, 1963, 82 longshoremen were illegally discharged in the Port of San Francisco. 57 of these men formed a group and retained a Los Angeles attorney to exonerate them of these charges which were alleged to be false, and were proven to be false by the State of California Unemployment Insurance Appeals Board, in April, 1964, and others of the 82 were further found

not guilty by the National Labor Relations Board in the Spring of 1965. The Union and the Employer still refused to accept these men back.

Arbitration was not offered these men until the unconscionable period of more than one year after their discharge, and only when the arbitrators had become defendants sued personally, in tort for damages, and representatively, in contract, for declaratory and injunctive relief. The arbitration was, further, futile, being composed of those very persons, in bias and interest, who had participated in the planning and accomplishment of the illegal discharges of these men. (Subsequent to the vindication of the plaintiffs in the Unemployment Hearings, and to the commencement of the action, and without any determination by the trial court on the *bona fides* of arbitration, which was tendered by the Complaint, the defendants proceeded to hold "hearings" where they affirmed their illegal acts. The statement of defendant Harry Bridges, published in his union newspaper even while the Coast Committee of the defendants of which he is a member, "deliberated" appears in an Exhibit in the Record which accompanies Petition 737, October Term, 1965, filed with this Honorable Court).

Suit commenced in Federal Court in April, 1964, and the Complaint alleged that the contract that went into effect in 1961 had been breached and in other particulars was invalid as created and applied to a large class of longshoremen who were deprived of full benefits.

The District Court dismissed Complaints submitted for the plaintiffs on the grounds they were too lengthy and violated Rule 8 of F.R.C.P. Still another Complaint

was submitted (Third Amended Complaint), which contained six and one-half pages—this Complaint was Dismissed With Prejudice on the ground of lack of jurisdiction.

It is possible, and it is the view of the writer, that the District Court, together with the Circuit Court of Appeals, which are both situated in the City of San Francisco, are reluctant and unwilling to allow the case, involving substantial portions of a maritime industry-wide Collective Bargaining Agreement affecting the entire Pacific Coast and Hawaii, go to trial for fear of jeopardizing interests principally located and based in San Francisco.

Justice Cardozo once wrote:

"There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives a coherence and direction to thought and action. Judges cannot escape that current anymore than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs...We may try to see things as objectively as we please. Nonetheless, we can never see them with any eyes except our own."

The Nature of the Judicial Process; 1965 ed., pp. 12-13.

During the lengthy law and motion period in the District Court, the majority of the plaintiffs grew discouraged, and, believing their "steering" committee that the trouble with their case was their lawyer, filed for a substitution of attorneys.

The Appellate Court received two Appeals from the undersigned on behalf of those men represented by him, one from the Order of the District Court Dismissing the Third Amended Complaint Without Leave To Amend; the other – Appeal from Dismissal With Prejudice of a purported Fourth Amended Complaint, which was illegally allowed to be filed "*nunc pro tunc*" two weeks after the first Appeal had been taken.

The Appellate Court has dismissed the Appeal of Petitioners from the Dismissal With Prejudice of the purported Fourth Amended Complaint on March 1, 1966, in contrast to its verbal statement on August 13, 1965, during a Hearing on whether Mandate should issue to the District Court to proceed to Trial on the Third Amended Complaint, that – *Appeal could be taken by Petitioners from any Order of the District Court on the yet unadmitted Fourth Amended Complaint, as parties to the action who contended that jurisdiction over the subject matter of the action had transferred to the Appellate Court on August 2, 1965, when Appeal was filed from Dismissal With Prejudice of the Third Amended Complaint.* This was in response to the contention by the undersigned that the normal processes of Appeal were inadequate to the redress of the abuse and excess of jurisdiction and irreparable impairment of Due Process in the subject class action which then was so swiftly assuming form in the trial Court.

The Appellate Court denied the Mandate. Then, the District Court, on August 16, 1965, through an invalid Order, admitted the purported Fourth Amended Complaint, "*nunc pro tunc*," then, on October 8, 1965,

through a second invalid Order, Dismissed it With Prejudice. Persons represented by the undersigned did so appeal from this Dismissal Order of the District Court, and the Appellate Court has Dismissed the Appeal of these persons, and, further, Denied their ensuing Application For Stay Pending Certiorari from this Dismissal, on March 4, 1966.

Those Appellants represented by attorneys other than the undersigned, had filed an Appeal from the second Dismissal Order, each Appeal, though from the same Order, being separate. In their Appeal proceeding, said other Appellants, through their attorneys, moved, that the Appeal of those parties represented by the undersigned be dismissed, and in said proceeding filed by said other attorneys, the Court of Appeals issued its Order that,

"The Motion of certain Appellants herein to Dismiss the Appeal as to WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, and JOHN THYLSTRUP is granted."

Hanley, Merrill, and Browning,
Judges.

The same logic which legitimately allows parties in interest to an Order the procedural right to move for the Dismissal of a separate Appeal from the same Order, of other parties to an Appeal, is contradicted directly by the Order granting Dismissal of the Appeal filed by those Appellants represented by the undersigned, from the Order of October 8, 1965, in a subject action to which these Appellants are equally parties and parties in interest, and where said Order is contended by them to be an invalid Order and not deter-

minable upon the merits.

In the event the Court of Appeals, should, however, it might do so, reach the conclusion that the said Order of October 8, 1965, is a valid Order, these Appellants have the right to the direct benefit as parties to an appeal, of a ruling by the Appellate Court that the Fourth Amended Complaint sufficiently states a cause of action. They have the right to be heard upon their contentions as to said Order, treating, as it does, of the transaction and events common to all parties to the action. Especially is this right to be heard so, with respect to any potential adverse disposition on the merits of *either* of the two Complaints. A denial of this right to be heard in the Appeal subject of its Dismissal Order of March 1, 1966, is a clear denial of Due Process warranting the interposition of the Supreme Court.

The subject action has been dealt with by the District Court as a class action, while, at one and the same time, its Orders have been effected according to representation only. See Ruling of June 21, 1965, Petition pp. 14, 15, Docket Number 737, October Term 1965, Supreme Court. Note, however, that the Order of July 20, 1965, recites "Sidney Gordon appearing for those Plaintiffs filing the Third Amended Complaint," (this Complaint was filed January 26, 1965, to the behalf of all of the plaintiffs) and that only subsequent to the Appeal of August 2, 1965, does the Court Order admitted "*nunc pro tunc*" a new pleading to the behalf of certain persons, solely pleading under the Third Amended Complaint as of June 21, 1965, when the Ruling which resulted in the Order of July 20, 1965, was rendered. Petition Appendices C, pp. 17, 18, 20, Docket Number

737, October Term 1965, Supreme Court.

After Appeal by members of the class, the previous disposition was held by the District Court to have been substantively binding upon all of the parties to the common transaction and events, giving rise to their action. See Order of October 8, 1965, pp. 20, 21, 22, Appendix C, Petition 737. In said Order, the Court states:

"...It appears to this Court that the underlying events which give rise to the allegations in the Complaint, and the basic issues to which these allegations give rise, are identical to, and not different from, the events, allegations and issues involved in the Third Amended Complaint."

Similarly, but conversely, in that each of the Orders appealed from dismisses each Complaint upon the same grounds -- the inability to state a good cause of action, the Appellate Court, should it hold valid the October 8, 1965 Order, could not well sustain as sufficient the Complaint of one set of Appellants without proceeding to sustain the other Complaint.

The present Order of Dismissal subject of this Petition is, in effect, a determination that the subject action is not a class action, while, at one and the same time, the Court of Appeals leaves open for itself to affirm the Order of October 8, 1965, *on the merits*, and, (even though it might then disclaim the same,) to, therein, in effect, bind these Appellants as to the sufficiency of the Third Amended Complaint. And, presently, by the said Dismissal Order, that Court has, consistently, foreclosed these Appellants, parties in interest in the single transaction of the action, and parties to the

action, as parties to their separate appeal from said October 8, 1965 Order, and there foreclosed them from being heard in said appeal upon their contention that said Order is invalid, *hence not binding upon the rights of any of the parties.*

Whether the Appeals from the Order of July 20, 1965, and the Order of October 8, 1965, are consolidated or heard separately, the present Ruling has been effected, to place the said Court of Appeals in a position to utilize the same as its authority to continue to disclaim the class nature of the action, and sanction, arbitrarily, and *at its option*, either an identical or disparate disposition of the two Complaints, all this stemming from Rulings thus far parallel to the dispositions by the United States District Court.

Further, should the Court of Appeals affirm the effect of its present Ruling that this matter is, on the one hand, not a class action, and on the other hand, should it determine that the Order of October 8, 1965, is an invalid Order, and that jurisdiction of the entire subject matter was transferred, *but only as to three Appellants*, by virtue of the Appeal of August 2, 1965, (however it would arrive at these inconsistent conclusions), (compare Orders of District Court dated July 20, 1965, pp. 17, 18, Appendix C, Petition, and August 16, 1965, Petition, pp. 27, Appendix D), the effect would be to entirely foreclose the rights of approximately fifty odd members of the class as the consequence of their change of representation. This, solely, from not having, through their new attorneys, filed under proper leave other pleadings prior to the August 2, 1965, Appeal, which transferred primary subject matter jurisdiction.

Such a foreclosure would thereby vitally affect the interests and the prosecution of those interests of the plaintiffs who appealed the Ruling of June 21, 1965, upon the Third Amended Complaint, changing the actual nature of the cause of action filed as a single cause of action on behalf of all of the plaintiffs named in the Third Amended Complaint, as a class action, reducing and altering the liability of defendants as contended in said Complaint, and the prosecution thereof as a trial matter. This foreclosure would reach directly to the basis, nature, extent, and scope of the relief sought against illegal treatment of the plaintiffs *as a class*, in the provisions and operation by defendants of the Collective Bargaining Agreement subject of the action, and the common deregistration transaction thereunder. And plaintiffs, as members of the class, have the right to be heard in all proceedings which affect the class, or which may result in Rulings in the appellate and trial process which discriminate as to rights in the subject action, against any members of the class.

If three Appellants may be left as the only persons entitled, after Appeal, by the Court of Appeals, to trial of an action determined by it not to be a class action, where the Third Amended Complaint, when Ruled upon by the District Court, and appealed upon to the Circuit Court, was the only pleading properly on file to the behalf of fifty-seven persons in the common declaratory, injunctive, and monetary reliefs therein sought, any proceeding in the subject action is inconceivable which would permit such a determination on appeal without their right to be heard.

The splitting of the common cause of action, and of its effective prosecution under the rights of Due Process of law afforded by the Constitution and the law applicable to the Federal Court system, and the role of the United States District Court sitting in San Francisco with respect to the same, have been, by the undersigned, each time accordingly gauged, hence, the August 13, 1965, Application for Mandate as to precisely those proceedings and Orders in said Court which ensued August 16, 1965, and thereafter.

Toward the same result, it is manifest, the undersigned submits, that the same flagrant course now takes place through the United States Court of Appeals, also situate in San Francisco, with the binding contentions of the Third Amended Complaint, as the initial and prime object of procedural and substantive destruction, these contentions being more far reaching in the reliefs sought than those applied for in the later illegal pleading, with the rest to follow, as in the October 8, 1965, disposition below.

The purpose of the within Petition is to attempt a timely arrest, toward a timely correction.

It is to the undersigned, almost incredible that the violation of rudimentary Due Process, and the accommodation thereby of the powerful interests of the Pacific Coast maritime industry, as expressed by the Dismissal of March 1, 1966, and the ensuing denial of Stay, can proceed apace without so much as even the color of constitutional warrant.

In Argument are cited the cases of *West Virginia Oil & Gas Co. vs George F. Brese Lumber Co.*; 213 F 2d 702; *U.S. ex rel Tillery vs Cavell;* 294 F 2d 12;

Blankenship vs Royalty Holding Co.; 202 F 2d 77.

In this connection, attention is respectfully directed to the Affidavit In Support of the Notice of Motion which was granted by the Appellate Court March 1, 1966, which accompanies as Record the instant Petition, and attention is respectfully directed to lines 4 through 19 of page 5 of said Affidavit.

The statement in said Affidavit page, lines 16 through 18, that "the transcript of the proceedings is ambiguous as to whether or not leave to file the new Complaint was granted by the Court," is totally bereft of truth. There was no "ambiguity," whatsoever.

These statements, under oath, not only are absolutely untrue, since in the said proceeding of June 7, 1965, the District Court, not only *denied*, explicitly, the speaking Motion by certain Plaintiffs represented through attorney other than the undersigned, that the Fourth Amended Complaint, later illegally filed without leave notwithstanding, be admitted, but it denied the formal Motion of said attorney for Severance, incorporated in its said formal Order of July 20, 1965, given reference as Docket entry 107, shown at Appendix D, page 26, Petition U.S. Supreme Court, 1965, Number 737. Said Order is hereto annexed as "Appendix C."

The Memorandum of present Petitioners in Response to the subject Motion to Dismiss in proceeding 20719 in the Appellate Court, incorporates by reference the proceeding in Mandamus, in the Circuit Court, Number 20701, which is Verified, and which sets forth the foregoing at page 16; and the Application For Stay, denied March 4, 1966, respecting the Order of Dismissal subject of this Petition, incorporates by refer-

ence the said Petition Number 737 containing the said Docket entry.

The foregoing cases are cited in Argument to show that, rather than correcting any clerical misprison or omission in the Record, pursuant to Rule 60(a) F.R.C.P., the Court, in its "*nunc pro tunc*" admission of the Fourth Amended Complaint, and granting of severance, August 16, 1965, on said speaking Motion, proceeded to reverse itself, in a matter of substance, following the transfer of primary jurisdiction through the August 2, 1965, Appeal.

The Order entered July 20, 1965, determined the rights of the Plaintiffs, nor in any wise, can the Motion of August 16, 1965, a speaking Motion, without Notice, be considered to have been a Motion, either, to alter or to vacate, the said Order within the requirements of Rules 59(a) or 60(b), F.R.C.P.

ARGUMENT

That The Subject Action Is A Class Action Within The Requirements of Rule 23(a)(3) F.R.C.P. Is Evident From The Allegations And The Prayer Of The Third Amended Complaint.

This document is appended to the within Petition, as "Appendix B."

These appellants, further, make reference to that Petition and its Appendices, Number 737, October 1965 Term, filed with the Supreme Court, November 12, 1965, in documentation of the matters of fact set forth in the within Petition.

In said Petition Number 737, the Exhibits of Court of Appeals for the Ninth Circuit, proceeding 20301, formed part of the record transmitted with said Petition.

The referenced Petition sought Certiorari to the Court of Appeals for the Ninth Circuit from its denial of Mandate, inclusive of interlocutory injunctive relief against the defendants, to the District Court, growing out of the course of proceedings below, comprehending the Order of July 20, 1965, which, in effect, constitutes, it is the contention of appellants, an invalid summary judgment binding on all the parties, against uncontradicted material matters of fact averred in support of preliminary injunctive relief denied by the District Court on the ground that the complaint conferred no jurisdiction.

The present Order sought to be reviewed, subject of the instant Petition, extends and develops the deprivations of Due Process complained of in the first Petition, punctuating these by specific procedural violations, now ensuing within the appeal itself.

The law of the case applicable under the facts, is, with reference to the Order of Dismissal subject of the within Petition, submitted by these appellants, to be as follows:

The instant action is a class action within Rule 23(a), (3), F.R.C.P.

All plaintiffs were bound by the Third Amended Complaint, filed January 26, 1965, as the only authorized pleading on file to their behalf at 11:00 A.M., June 21, 1965, when the District Court ruled that said Complaint be Dismissed With Prejudice, and preliminary injunctive relief *to the behalf of all the plaintiffs* was Ordered denied, which Ruling was formalized by the Order of July 20, 1965. Said Order was an invalid, final, summary judgment, in the action, upon which

are predicated the substantive appellate rights of all parties, irrespective that change in representation of many of the plaintiffs had been effected June 7, 1965.

Kainz v Anheuser-Busch, Inc.; 194 F2d 737

State Wholesale Grocers v Great Atlantic & Pacific Tea Co.; 24 F.R.D. 510

Canuel v Oskuian; 23 F.R.D. 307

System Federation No. 91 Ry. Emp. Dept., American Federation of Labor v Reed; 180 F2d 991

Johnson v Comtoir, etc. D'Exportation; 135 CA 2d 638 at 688. *Dinwiddie v Brown;* 230 F2d 465. Certiorari denied. 76 S. Ct. 1041

Syracuse Broadcasting Corp. v Newhouse; 271 F2d 610

United States v Arizona; 346 U.S. 907

Cott Beverage Corp. v Canada Dry Gingerale, Inc.; 243 F2d 795

CMAX, Inc. v Drewry Photocolor Corp.; 295 F2d 695

When Certain Plaintiffs, Who Are The Present Petitioners, Appealed the July 20, 1965, Order, In The Subject Class Action, On August 2, 1965, Jurisdiction Of The Subject Matter Of The Action Was Transferred For All Purposes and Proceedings Affecting the Substantive Rights Of All The Parties, To The Court Of Appeals For The Ninth Circuit, and Said District Court Was Without Jurisdiction In The Premises As To Any Proceedings Except In Aid Of Said Appeal.

Proceedings and Orders in said District Court, which ensued after August 2, 1965, are without its jurisdiction, and could not affect or govern the determination of said substantive rights, nor may these rights be on

the merits determined in any appellate proceedings which are based on said Orders and proceedings by said District Court, done after the Appeal filed August 2, 1965.

The Dismissal Order by the Court of Appeals, entered August 1, 1965, which dismisses the Appeal of certain plaintiffs from the invalid Order of October 8, 1965, is contrary in law to their substantive interest and rights in the subject action as a class action, violative therein of their appellate and trial rights to substantive and procedural Due Process, and, specifically, violative of procedural Due Process in the right of said appellants to a hearing in said Appeal, and to be parties to a determination of the said Appeal, irrespective that said right does also exist in another appeal pending from another appeal pending from another Order in the subject action.

And the same violations of Due Process through said Order of March 1, 1966, do warrant the interposition of the Supreme Court as the sole forum available to these appellants for the enforcement of those protections accorded for protection of the rights of these appellants by the Constitution, in the administration of justice by a Court of Appeals.

Ideal Toy Corp. v Sayco Doll Corp.; 302 F2d 623, 625

Turner v H. M. H. Pub. Co.; 328 F2d 136

West Virginia Oil & Gas Co. v George F. Brese Lumber Co.; 213 F2d 702

U.S. ex rel Tillery v Cavell; 294 F2d 12

Blankenship v Royalty Holding Co.; 202 F2d 77

CONCLUSION

In light of the foregoing, it is respectfully submitted that Writ of Certiorari to the Honorable United States Court of Appeals for the Ninth Circuit in proceeding Number 20719 in the files of said Court, being entitled *George R. Williams, et al. v Pacific Maritime Association, et al.*, should, by this Honorable Supreme Court of the United States, forthwith issue.

Respectfully submitted,

SIDNEY GORDON
Attorney for Petitioners

(Appendices Follow)

Appendix A

CONSTITUTIONAL PROVISIONS

AMENDMENT V–
CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS: JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without Due Process of law; nor shall private property be taken for public use, without just compensation.

Appendix B

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

George R. Williams, William Jones, Paul May, Rathan Guns Jr., Edgar J. Dunlap, Walter L. Robinson, Frank Nereu, Louis T. Lacy, Leroy J. Provost, Roger W. Fleeton, Robert E. Birks, Anthony Melvin Jr., Oliver Geeter, Antonio S. Cafeteiro, Edward Reed, William T. Carroll, Albert W. Roberts, Percy Fountain, John J. Thystrup Jr., Donald L. Nau, William J. Hurst Jr., Willie C. Merritt, Mack Hebert, Manuel Neureu Jr., Arthur G. Winters, Frank Giannino, Stanley L. Weir, Fred Hays, Willie J. Whitehead, Rhody Adams, Mario V. Luppi, Arthur L. Hughes, Chris E. E. Makaila, Jeremia Richards, Cleo Love, Louis J. Richardson, Charles J. Johnson, Reginald W.	CIVIL ACTION FILE NO. 42284

Saunders, Willie Jenkins Jr., Willie D. Palmer, Conway T. Hudson, John T. Leggett; Alfred Straughter, Thomas Nisby, Timothy E. Carter, James U. Carter, Melvin Kennedy, Henry Imperial, James Langford, Johnny J. Cherry, Ellis E. Graves, James Green, Ulysses Hawkins, Theodore Tolliver, Lawrence Johnson, and Herman Crawford,

Plaintiffs,

vs.

PACIFIC MARITIME Association, a non-profit corporation; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a voluntary unincorporated Association; LOCAL 10 of INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a voluntary unincorporated Association; Harry Bridges, Howard Bodine, L. B. Thomas,

THIRD AMENDED COMPLAINT
(Declaratory and Injunctive Relief; Damages.)

William Chester, Robert Rohatch, Thomas Silas, Charles Hoffman, Joseph Perez, Albert James, Richard Harp, and James Kearney, as individuals,

Defendants.

COUNT I.

The Plaintiffs named in the caption on their own behalf, and on behalf of all other plaintiffs similarly situated, complain of the defendants and each of them and for cause of action say:

The action is brought under the Constitution and the laws of the United States; under the Declaratory Judgment Act (29 USC Sec. 2201-1); under the Injunction Act 29 USC Sec. 2282 and 2284); Section 301 (a) of the Labor Management Relations Act (29 USC Sec. 185); and Title 29, Section 401, 402 (c), 411 (a) (1) (2) (4) (5) USCA.

I.

The matter in controversy exceeds the sum and value of $10,000.00 exclusive of interest and costs.

II.

Plaintiffs whose names are mentioned in the caption are longshoremen, members of LOCAL 10 of the INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (hereinafter referred to as the "Local") and through the Local they are members of the INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION (hereinafter referred

to as the "International"). They are of the class of non-full-registered longshoremen and have been for a various length of time and were such at the time of the occurrence herein complained of.

III.

The plaintiffs constitute a class so numerous as to make it impracticable to bring them before the court; however, the named plaintiffs will fairly insure adequate representation of all, and therefore, the named plaintiffs are suing on their own behalf and on behalf of all others similarly situated though not named. The plaintiffs ask for leave of court to file by amendments to this complaint, within a reasonable time to be set by the court, the names of such others heretofore unnamed who desire their names to be included in these named in the caption above.

IV.

The defendant, PACIFIC MARITIME ASSOCIATION (hereinafter referred to as "Pacific") is a corporation in accordance with the laws of the State of California, having offices in the city and county of San Francisco. Defendant INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION is a voluntary labor organization composed of various local unions such as Defendant LOCAL 10 of the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION which is an unincorporated association of its members. Both the International and Local are representatives for the purposes of collective bargaining of plaintiffs and other mem-

bers. Defendants HARRY BRIDGES, HOWARD BODINE, L. B. THOMAS, WILLIAM CHESTER, ROBERT ROMATCH, THOMAS SILAS, CHARLES HOFFMAN, JOSEPH PEREZ, ALBERT JAMES, RICHARD HARP, and JAMES KEARNEY, at those times complained of herein are persons who acted under the color of union office in said associations, and in concert with defendant, Pacific. These persons are sued as individuals for the reason that their action directed against plaintiffs is beyond their authority as officers and agents of said International and said Local respectively.

V.

The defendants and each of them entered into an agreement with each other for the purposes of illegally depriving the plaintiffs of the right to work in their occupation of longshoremen and particularly to deprive said plaintiffs of the right to become full registered longshoremen at their usual port of employment or in any port where there is in force a certain agreement known as Pacific Coast Longshore Agreement entered into between Pacific and the International.

That the defendants for the purposes of depriving plaintiffs of their right to work resorted to strategems and the wrongful discrimination against plaintiffs and they did by such artifices effectively deprive plaintiffs of their right to work.

That among the said strategems, discrimination and artifices operated and employed by said defendants to so deprive plaintiffs were said Pacific Longshore Agreement, illegal provisions thereof, as created and applied, collateral understandings, and Rules and Memoranda.

That on July 27, 1963, plaintiffs in accordance with said Agreement, filed appeal reporting and deprivation, and within said Union, plaintiffs on July 11, 1963, were endorsed in their rights of work and membership through resolution of instruction to said Union adopted by the rank and file of the members of said LOCAL 10 in meeting assembled, but, that up to and including commencement of the instant action, were but ignored by the said defendants. Plaintiffs have exhausted all internal remedies.

By reason of the above set forth facts, a controversy exists between the plaintiffs and defendants. In said controversy plaintiffs claim that the acts of defendants are illegal, unlawful, and beyond the scope of their authority.

Said sets of defendants are illegal, unlawful and beyond the scope of their authority for the following reasons:

(a) The bargaining agreement under which the defendants are purportedly acting does not authorize defendants to prevent plaintiffs to become full registered longshoremen.

(b) The Agreement known as Pacific Coast Longshore Agreement does not authorize defendants to maintain plaintiffs as non-full registered longshoremen nor does it authorize them to deprive plaintiffs of their right to work.

(c) The acts of the defendants, among others, their interference with, domination and manipulation of the grievance and appellate processes of the said Agreement, including the Coast Arbitrator and the internal remedies and processes of said International and Local,

are discriminatory and contrary to the Constitution and the laws of the United States.

VI.

Plaintiffs did and will suffer because of the unlawful and unconstitutional acts of the defendants irreparable injuries in that they will be continually deprived of their right to work. The damages resulting from said injuries are not monetarily compensable and defendants threaten to continue their unlawful and unconstitutional acts unless they will be restrained by the order of this Honorable Court.

Plaintiffs are entitled to a judgment declaring that the acts of the defendants as were carried out and as threatened to be carried out are illegal and void.

Plaintiffs are entitled to an injunction directed against the defendants and each of them, their agents, servants, deputies and employees restraining them in the future from doing unlawful and unconstitutional acts resulting in the plaintiffs' deprivation of their right to work.

COUNT II

Plaintiffs re-allege Paragraphs I through VI both inclusive of Count I and further say:

VII

The acts of the defendants are malicious and therefore, plaintiffs are entitled to general and punitive damages.

WHEREFORE, the plaintiffs pray:

1. That this Court declare that the acts of the defendants and each of them as heretofore carried out and as threatened to be carried out resulting in plaintiffs' deprivation of their right to work are illegal, and

declare and affirmatively enforce the status of plaintiffs as members of Local 10, in full industry registration.

2. That the defendants, PACIFIC MARITIME ASSOCIATION, a corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, and LOCAL 10 of the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S, UNION and HARRY BRIDGES, HOWARD BODINE, L. B. THOMAS, WILLIAM CHESTER, ROBERT ROHATCH, THOMAS SILAS, CHARLES HOFFMAN, JOSEPH PEREZ, ALBERT JAMES, RICHARD HARP, and JAMES KEARNEY, their agents, servants, deputies and employees, be permanently enjoined and restrained from depriving plaintiffs of their right to so work and participate in their chosen profession as longshoremen.

3. That the Court award plaintiffs against the defendant, PACIFIC MARITIME ASSOCIATION, and against HARRY BRIDGES and the other defendants herein sued as individuals, general damages in the amount of $500,000.00 and the further sum of $100,000.00 as exemplary damages, in addition to such special damages for loss of benefits and earnings, and special damages, including physical and emotional injury, as shall be shown and proved at time of trial when fully in amount ascertained, and this complaint, by leave of Court amended to conform thereto.

4. That the Court award plaintiffs costs on this behalf incurred and such other and further relief as the Court seems meet.

/s/ SIDNEY GORDON
Sidney Gordon
Attorney for Plaintiffs

FILED
JUL 20 1965
JAMES P. WELSH, Clerk

Appendix C

In the United States District Court for the Northern District of California, Southern Division

No. 42284

George R. Williams, et al.,
Plaintiffs,
vs.
Pacific Maritime Association, a nonprofit corporation, et al.,
Defendants.

ORDER DENYING MOTION FOR ORDER OF SEVERANCE

The motion of certain Plaintiffs for an Order severing themselves from the other Plaintiffs in this action having come regularly on for hearing in the Courtroom of the above entitled Court, the 7th day of June, 1965, Judge George B. Harris, presiding, and said certain Plaintiffs appearing by their attorney, Arthur Brunwasser, and other Plaintiffs appearing by their attorney Sidney Gordon, Defendant Pacific Maritime Association appearing by its attorney Richard Ernst and Defendant International Longshoremen's and Warehousemen's Union, and Local 10 thereof, and the individual Defendants, appearing by their attorney Norman Leonard; and the Court having considered the arguments of counsel and memoranda and affidavit submitted in support of said Motion, and based on the records and pleadings herein,

The Court finds that all of the Plaintiffs are in identity of interest, and the Court further finds that it is in the best interests of the administration of justice that the Order moved be denied. The Court finds that there is no good cause shown for said order Moved, and

Based on said findings and the records and pleadings on file herein, and good cause appearing,

IT IS HEREBY ORDERED: That the Motion of certain Plaintiffs for an Order severing themselves from the other Plaintiffs in this action is denied.

DATED: July 19, 1965.

United States District Judge

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FILED
JUL 1 1966
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 189

GEORGE R. WILLIAMS, et al., ex rel WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, JOHN THYLSTRUP,

Relators-Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION, et al.,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari

RICHARD ERNST
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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1371

GEORGE R. WILLIAMS, et al., ex rel WILLIAM THOMAS CARROLL, CHRIS E. E. MAKAILA, JOHN THYLSTRUP,

Relators-Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION, et al.,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari

THE QUESTION RAISED

While the petition argues a variety of points and presents a number of confusing arguments, we submit that the only question properly presented is whether the relators may require the other persons initially involved in the proceeding in the District Court to join in a single appeal to the Court of Appeals for the Ninth Circuit.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

None of the grounds for granting a writ of certiorari under this Court's Rule 19 is presented by the petition. There is no claim that the court of appeals has rendered a decision in conflict with the decision of another court of appeals, with another decision of that court, or with any of the applicable decisions of this Court. There is no claim that the court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. There is no claim that an important question of federal law is involved that has not been, but should be, settled by this Court. There is no suggestion that the question raised, which is essentially one as to which lawyer should represent a number of clients, is of such significance as to justify a request for this Court to devote any time to the matter.

ARGUMENT

It appears to this respondent that the petition raises two arguments in support of the claim that the relators are entitled to some relief. First, relators argue that there would be a miscarriage of justice if some of the persons in the "class" that initiated the lawsuit involved in their petition are unsuccessful in obtaining an opportunity to file an amended pleading, while others are successful in such effort, because the claims of all concerned are the same so that if one group can state a cause of action then the other can also. Second, the petition suggests that San Francisco is a backwater town such that the federal courts sitting in San Francisco, both the District Court and the Court of Appeals for the Ninth Circuit, are so imbued with provincialism that they are unable to give a fair hearing to any-

one who attacks Harry Bridges or the shipping industry (Pet. 5).

To state the second argument is to answer it.

The first argument ignores the obvious remedy available in the court of appeals. The relators need only get their brief on appeal on file and ask the Court of Appeals for the Ninth Circuit to consolidate the two appeals for purposes of oral argument. If there were any merit in the underlying substantive claim that a fifth pleading might state the facts involved in this case so as to state a claim on which the federal court could give relief, the action suggested above towards getting the same decision on both appeals would eliminate, we believe, the theoretical possibility that one group of the "class" involved would gain the opportunity to file an amended pleading while the other group would be denied it.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

RICHARD ERNST
Attorney for Pacific Maritime Association